

Surface Mining Reclamation and Enforcement, Interior

§ 761.16

§ 761.15 Procedures for waiving the prohibition on surface coal mining operations within the buffer zone of an occupied dwelling.

(a) This section does not apply to:

(1) Lands for which a person has valid existing rights, as determined under § 761.16.

(2) Lands within the scope of the exception for existing operations in § 761.12.

(3) Access or haul roads that connect with an existing public road on the side of the public road opposite the dwelling, as provided in § 761.11(e)(2).

(b) If you propose to conduct surface coal mining operations within 300 feet, measured horizontally, of any occupied dwelling, the permit application must include a written waiver by lease, deed, or other conveyance from the owner of the dwelling. The waiver must clarify that the owner and signator had the legal right to deny mining and knowingly waived that right. The waiver will act as consent to surface coal mining operations within a closer distance of the dwelling as specified.

(c) If you obtained a valid waiver before August 3, 1977, from the owner of an occupied dwelling to conduct operations within 300 feet of the dwelling, you need not submit a new waiver.

(d) If you obtain a valid waiver from the owner of an occupied dwelling, that waiver will remain effective against subsequent purchasers who had actual or constructive knowledge of the existing waiver at the time of purchase. A subsequent purchaser will be deemed to have constructive knowledge if the waiver has been properly filed in public property records pursuant to State laws or if surface coal mining operations have entered the 300-foot zone before the date of purchase.

[64 FR 70833, Dec. 17, 1999]

§ 761.16 Submission and processing of requests for valid existing rights determinations.

(a) *Basic framework for valid existing rights determinations.* The following table identifies the agency responsible for making a valid existing rights determination and the definition that it must use, based upon which paragraph of § 761.11 applies and whether the request includes Federal lands.